II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/827

of 11 October 2022

laying down regulatory technical standards amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 [1], and in particular Article 28(5), third subparagraph, Article 29(6), third subparagraph, Article 52(2), third subparagraph, Article 72b(7), fourth subpagraph, Article 76(4), third subparagraph, Article 78(5), third subparagraph, Article 78a(3), fourth subparagraph, and Article 79(2), third subparagraph, thereof,

Whereas:

(1) Regulation (EU) 2019/876 of the European Parliament and of the Council [2] amended the terminology used in a number of Articles of Regulation (EU) No 575/2013. Those amendments should be reflected in Commission Delegated Regulation (EU) No 241/2014 [3], which sets out regulatory technical standards for own funds requirements for institutions.

(2) Regulation (EU) 2019/876 introduced into Regulation (EU) No 575/2013 new requirements for own funds and eligible liabilities for global systemically important institutions (G-SIIs) and for material subsidiaries of non-EU G-SIIs, as well as harmonised criteria for eligible liabilities items and instruments to comply with those requirements. Regulation (EU) 2019/876 also introduced Articles 72b(7) and 78a(3) into Regulation (EU) No 575/2013, which require the European Banking Authority (EBA) to develop draft regulatory technical standards specifying some of the eligibility criteria for eligible liabilities instruments as well as the permission regime for reducing those instruments. The own funds requirements for institutions and the new requirements for own funds and eligible liabilities pursue the same objective of ensuring that institutions have sufficient loss-absorbing capacity. For that reason, the standards for own funds instruments and the standards for eligible liabilities instruments are

[1] OJ L 176, 27.6.2013, p. 1.

[2] Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

[3] Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for own funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).

closely linked with each other, in particular where Regulation (EU) No 575/2013 expressly requires those standards to be fully aligned. To ensure coherence and consistency between the standards for own funds instruments and the standards for eligible liabilities instruments, and to facilitate a comprehensive view and compact access to those standards by persons subject to them, it is appropriate to incorporate the standards for eligible liabilities instruments into Delegated Regulation (EU) No 241/2014.

(3) The requirements for own funds and eligible liabilities in both Regulation (EU) No 575/2013 and Directive 2014/59/EU of the European Parliament and of the Council [4] share the same objective of ensuring that institutions have sufficient loss absorbing-capacity. For that reason, Directive (EU) 2019/879 of the European Parliament and of the Council [5] introduced into Directive 2014/59/EU Article 45b(1), which extended, for all resolution entities, the eligibility criteria for eligible liabilities instruments to liabilities eligible for meeting the minimum requirement for own funds and eligible liabilities (MREL), with the exception of the criterion referred to in Article 72b(2), point (d), of Regulation (EU) No 575/2013. In relation to resolution entities that are G-SIIs entities and Union material subsidiaries of non-EU G-SIIs, Directive (EU) 2019/879 introduced into Directive 2014/59/EU Article 45d. That provision provides in its paragraph 1, point (a), and in its paragraph 2, point (a), both read in conjunction with Article 45b(1), second subparagraph, that the eligibility of liabilities for meeting the minimum required level of MREL is conditional upon the compliance of those liabilities with the eligibility criteria for eligible liabilities instruments. Those criteria require, inter alia, that the liabilities are not funded directly or indirectly by the institution, that the liabilities cannot be reduced without prior permission of the resolution authority, and that the liabilities may not contain an incentive to redeem, except in the cases referred to in Article 72c(3) of Regulation (EU) No 575/2013. Similarly, in relation to entities that are not resolution entities, Directive (EU) 2019/879 introduced into Directive 2014/59/EU Article 45f. Paragraph 2, points (a)(ii) and (a)(v), of that Article made the eligibility of liabilities subject to compliance with certain eligibility criteria for eligible liabilities instruments and to the requirement that the acquisition of ownership of the liabilities is not funded directly or indirectly by the entity that is subject to that Article. It is therefore necessary to lay down that the provisions of Delegated Regulation (EU) No 241/2014 related to direct and indirect funding of eligible liabilities instruments, form and nature of incentives to redeem and prior permission to reduce such instruments should also be applied in a consistent manner for the purposes of Article 45b(1) and Article 45f(2), points (a)(ii) and (a)(v), of Directive 2014/59/EU. In order to ensure that consistency, the term 'eligible liabilities instruments' should also be understood as a reference to 'eligible liabilities' as referred to in Article 45b and Article 45f(2), point (a), of Directive 2014/59/EU, regardless of the residual maturity of those liabilities, and the term 'institution' should also apply to any entity subject to MREL in accordance with Article 45(1) of that Directive.

(4) Article 28(1), point (b), Article 52(1), point (c), and Article 63, point (c), of Regulation (EU) No 575/2013 make the eligibility of own funds instruments conditional on them not being funded directly or indirectly by the institution. Regulation (EU) 2019/876, by introducing in Regulation (EU) No 575/2013 Article 72b(2), point (c), extended that condition to eligible liabilities instruments, with the difference that, in line with the Total Loss-absorbing Capacity (TLAC) standard, eligible liabilities instruments should not be directly or indirectly funded by the resolution entity. Article 72b(7), first subparagraph, point (a), of Regulation (EU) No 575/2013 mandates the EBA to specify, through draft regulatory technical standards, the applicable forms and nature of indirect funding of eligible liabilities instruments. According to Article 72b(7), second subparagraph, of that Regulation, those draft regulatory technical standards are to be fully aligned with the delegated act referred to in Article 28(5), first subparagraph, point (a), of Regulation (EU) No 575/2013, which is Delegated Regulation (EU) No 241/2014. The provisions of that Delegated Regulation should therefore also apply to eligible liabilities instruments.

(4) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

(5) Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (OJ L 150, 7.6.2019, p. 296).

(5) The eligibility criterion on direct and indirect funding prevents the acquisition of ownership of own funds instruments and eligibile liabilities instruments funded directly or indirectly by an institution or resolution entity. Without that criterion, losses could come back to those entities, potentially diminishing or neutralising the loss relief that the instruments were supposed to provide. The risk of such a negative feedback loop also exists within banking and resolution groups, for instance in the context of the issuance and subscription of instruments eligible to meet the new internal MREL requirement laid down in Article 45f of Directive 2014/59/EU. The rules on direct and indirect funding of own funds and eligible liabilities instruments should therefore capture funding chains maintaining risks within a group, irrespective of whether those funding chains involve an external investor or not. Indeed, it is necessary to capture situations of intragroup circular funding so as to avoid circumvention of the rules on direct and indirect funding of own funds and eligible liabilities instruments which could occur, for instance, when funding is provided via subsidiaries of the institution or resolution entity or by other entities with which the institution or resolution entity has interdependencies. It should therefore not be necessary that the funding is provided by that institution to conclude that capital instruments or liabilities are directly or indirectly funded by the institution issuing such instruments or liabilities. Thus, a qualification of funding as direct or indirect funding may also be possible where that funding is provided by an entity included in the scope of prudential or accounting consolidation of the institution, the institutional protection scheme or the network of institutions affiliated to a central body to which the institution belongs, or the scope of supplementary supervision of the institution. That should apply regardless of whether that other entity belongs to another resolution group.

(6) Regulation (EU) 2017/2401 of the European Parliament and of the Council ([6]) removed the definition of 'excess spread' from Article 242 of Regulation (EU) No 575/2013. Since Article 12(3) of Delegated Regulation (EU) No 241/2014 uses that term by refering to Article 242 of Regulation (EU) No 575/2013, it is necessary to amend Article 12(3) of that Delegated Regulation by introducing a definition of the term 'excess spread' directly into that Article.

(7) Article 52(1), point (g), and Article 63, point (h), of Regulation (EU) No 575/2013 make the eligibility of Additional Tier 1 instruments and Tier 2 instruments conditional upon the absence of any incentive for their principal amount to be redeemed. Regulation (EU) 2019/876, by introducing in Regulation (EU) No 575/2013 Article 72b(2), point (g), extended that requirement to eligible liabilities instruments, with the difference that for eligible liabilities instruments incentives to redeem are permitted in the cases referred to in Article 72c(3) of Regulation (EU) No 575/2013. That amendment should be reflected in Delegated Regulation (EU) No 241/2014.

(8) With regard to index holdings, Regulation (EU) 2019/876 introduced into Regulation (EU) No 575/2013 Article 76. That Article extended the scope of the prior permission to be granted by the competent authority – allowing an institution to use a conservative estimate of the underlying exposure of the institution to instruments included in indices – to eligible liabilities instruments of institutions. That amendment should be reflected in Delegated Regulation (EU) No 241/2014. The provisions in that Regulation regarding estimates used as an alternative to the calculation of underlying exposures to own funds instruments included in indices being 'sufficiently conservative' and the meaning of 'operationally burdensome' should thus be amended to also apply to eligible liabilities instruments.

(9) Regulation (EU) 2019/876 inserted Article 78(1), second subparagraph, into Regulation (EU) No 575/2013 to enable competent authorities to grant to institutions a general prior permission to reduce own funds for a predetermined amount and a limited period of time. It is therefore necessary to remove from Delegated Regulation (EU) No 241/2014 preconditions and limits that are applicable to a prior permission for market-making purposes, since those preconditions and limits are now embedded in the general prior permission regime laid down in Article 78(1), second subparagaph, of Regulation (EU) No 575/2013.

([6]) Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (OJ L 347, 28.12.2017, p. 1).

(10) The prior permission regimes for reducing own funds, laid down in Article 78 of Regulation (EU) No 575/2013, and for reducing eligible liabilites instruments, laid down in Article 78a of that Regulation, both aim at ensuring compliance with regulatory requirements related to own funds and to own funds and eligible liabilities, and have a number of similar features. It is therefore necessary to standardise the processes followed by competent authorities and resolution authorities for both the general prior permission referred to in Article 78(1), second subparagraph, and Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, and any other permissions referred to in those Articles. Furthermore, to ensure that the specificities of any prior permission are taken into account, and to ensure that those permissions are appropriately used for their specific purposes, it is necessary to lay down that competent authorities and resolution authorities should be required to specify the period for which a prior permission other than a general prior permission is granted, and a maximum limit for that specified period should be established.

(11) Articles 78(1), second subparagraph, and 78a(1), second subparagraph, of Regulation (EU) No 575/2013 require the general prior permission for reducing own funds and eligible liabilities instruments to be granted for a specified period that shall not exceed one year. An application for the renewal of a general prior permission which has not yet expired should not require the same level of scrutiny or interaction between authorities as the application for the original permission, if the institution has not requested for an increase in the predetermined amount set when the original permission was granted and has not changed the rationale provided when the original permission was requested. Consequently, in those specific circumstances, the content of the application to be submitted by institutions and the timing for the submission of the application should be reduced.

(12) Article 77(2) of Regulation (EU) No 575/2013 requires institutions to obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of eligible liabilities instruments. According to Article 78a(1) of that Regulation, the permission may only be granted where a number of conditions have been complied with, including the condition that the institution replaces the eligible liabilities instruments with own funds or eligible liabilities instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution. Article 78a(3), second subparagraph, of Regulation (EU) No 575/2013 requires that the standards on the meaning of 'sustainable for the income capacity of the institution' in the context of eligible liabilities instruments are fully aligned with its equivalent for own funds. It is therefore necessary to specify that the same meaning of 'sustainable for the income capacity of the institution' is to be used for both types of instruments.

(13) It is necessary to align the general prior permission regimes for own funds and eligible liabilities instruments to ensure that those regimes are applied coherently across the Union. The predetermined amount to be set by resolution authorities when granting the general prior permission to reduce eligible liabilities instruments should therefore be subject to limits, without preventing resolution authorities to set lower predetermined amounts for a particular institution where justified by the specific circumstances of the case. It is also necessary to prevent institutions from operating at a level of own funds and eligible liabilities instruments that would fail to reflect that a part of the own funds and eligible liabilities instruments would not be available to absorb losses when needed. In case of a general prior permission, the predetermined amount for which the authority concerned has given its permission should therefore be deducted from the moment the authorisation is granted.

(14) It is necessary to ensure a proportionate treatment for institutions whose resolution plans provide that they are to be wound up under normal insolvency proceedings and for which the resolution authority has set the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses. Those institutions should therefore be able to request a permission, including a general prior permission, for reducing eligible liabilities instruments based on a simplified application regime. Such a regime should entail reduced information requirements and, to further reduce the administrative burden of those institutions and of resolution authorities, the prior permission should be deemed granted in the absence of a reply from the resolution authority. Given that those institutions do not need to issue eligible liabilities instruments for meeting the minimum requirement for own funds and eligible liabilities, the predetermined amount of eligible liabilities instruments to be reduced should not be subject to the same limits as for other institutions.

(15) Article 78a(3) of Regulation (EU) No 575/2013 instructs the EBA to develop regulatory technical standards to specify the procedure for granting a permission to reduce eligible liabilities instruments and to specify the process of cooperation between the competent authority and the resolution authority. In order to ensure compliance with own funds and eligible liabilities requirements laid down in Regulation (EU) No 575/2013, Directive 2013/36/EU of the European Parliament and of the Council ([7]) and Directive 2014/59/EU, the process of cooperation between the competent authority and the resolution authority should include consultation with the competent authority on the application for prior permission received by the resolution authority. That consultation should be conducted in a way that enables the competent authority to express an informed view on the consultation, including where its agreement is required for establishing the margin by which the institution's own funds and eligible liabilities must exceed its requirements, with an adequate exchange of information and sufficient time to respond to the consultation.

(16) Prior to the entry into force of Regulation (EU) 2019/876, Article 79(1) of Regulation (EU) No 575/2013 provided that a competent authority may temprorary waive the provisions on deductions for own funds instruments where an institution held those instruments in a financial sector entity for the purposes of a financial assistance operation designed to reorganise and save that entity. Regulation (EU) 2019/876, by amending Article 79(1) of Regulation (EU) No 575/2013, extended the scope of the temporary waiver that competent authorities may grant to institutions' holdings of eligible liabilities instruments in an institution. As a result, the provisions of Delegated Regulation (EU) No 241/2014 concerning that temporary waiver should be amended to also apply to institutions' holdings of eligible liabilities instruments in institutions.

(17) Delegated Regulation (EU) No 241/2014 should therefore be amended accordingly.

(18) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the EBA.

(19) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ([8]).

(20) In accordance with the procedure set out in Article 10 of Regulation (EU) No 1093/2010, the Commission has endorsed with amendments the draft regulatory technical standards submitted by EBA explaining the reasons for the amendments. EBA provided a formal opinion, accepting the proposed amendments with the exception of those relating to the introduction of an explicit prohibition of indirect intragroup funding and the introduction of a tacit agreement mechanism for the general prior permission to reduce eligible liabilities by entities the MREL of which does not exceed the own funds requirements.

(21) After carefully assessing the arguments EBA provided to underpin its objection to the introduction of a provision on intragroup funding in the enacting terms of the technical standards, the Commission remains of the view that the prohibition of indirect funding should explicitly capture all relevant funding chains, regardless of whether they involve an external investor.

(22) The Commission fully recognises the importance of ensuring a proportionate treatment of entities whose MREL does not exceed the own funds requirements. However, the submission of an application requesting the prior permission to reduce their eligible liabilities is an inherent feature of the prior permission regime as set out in Article 78a(1) of Regulation (EU) No 575/2013 and hence cannot be waived. Nevertheless, in order to reduce the

([7]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([8]) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

administrative burden of those entities and of their resolution authorities to a minimum, the former should be allowed to submit a simplified application to request a prior permission and the latter should be allowed to grant such permission on the basis of a tacit agreement,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 241/2014

Delegated Regulation (EU) No 241/2014 is amended as follows:

(1) The title is amended as follows:

‘**Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for own funds and eligible liabilities requirements for institutions**’;

(2) Article 1 is amended as follows:

(a) point (c) is replaced by the following:

‘(c) the applicable forms and nature of indirect funding of own funds instruments, in accordance with Article 28(5) of Regulation (EU) No 575/2013 and eligible liabilities instruments in accordance with Article 72b(7), point (a), of that Regulation;’;

(b) the following point (ha) is inserted:

‘(ha) the form and nature of incentives to redeem for the purposes of the condition set out in Article 72b(2), first subparagraph, point (g), and Article 72c(3) of Regulation (EU) No 575/2013, in accordance with Article 72b(7), point (b), of that Regulation;’;

(c) point (i) is replaced by the following:

‘(i) the extent of conservatism required in estimates used as an alternative to the calculation of underlying exposures for indirect holdings arising from index holdings and the meaning of operationally burdensome for the institution to monitor those underlying exposures, in accordance with Article 76(4), points (a) and (b), of Regulation (EU) No 575/2013;’;

(d) the following point (ja) is inserted:

‘(ja) the procedure, including the limits and information requirements, for granting the permission to reduce eligible liabilities instruments, and the process of cooperation between the competent authority and the resolution authority in accordance with Article 78a(3) of Regulation (EU) No 575/2013;’;

(e) point (k) is replaced by the following:

‘(k) the conditions for a temporary waiver for deduction from own funds and eligible liabilities to be provided, in accordance with Article 79(2) of Regulation (EU) No 575/2013;’;

(3) in Chapter I, the following Article 1a is inserted:

‘*Article 1a*

Application of this Regulation to entities subject to the minimum requirement for own funds and eligible liabilities, and to eligible liabilities referred to in Directive 2014/59/EU

For the purposes of the application of Articles 8, 9 and 20, and Chapter IV, Section 2, of this Regulation, entities subject to the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU shall be considered to be ‘institutions’, and ‘eligible liabilities’ as referred to in Article 45b and Article 45f(2), point (a), of that Directive shall be considered to be ‘eligible liabilities instruments’.’

(4) the title of Chapter II is replaced by the following:

‘CHAPTER II

ELEMENTS OF OWN FUNDS AND ELIGIBLE LIABILITIES’;

(5) in Chapter II, the title of Section 1 is replaced by the following:

‘*SECTION 1*

Common Equity Tier 1 capital and eligible liabilities items and instruments’;

(6) in Article 4(2), the following point (ka) is inserted:

‘(ka) in Lithuania: institutions registered as ‘Centrinė kredito unija’ under the ‘Centrinių kredito unijų įstatymas’;’

(7) in Article 4(2), point (r) is replaced by the following:

‘(r) in Sweden: institutions registered as ‘Medlemsbank’ or as ‘Kreditmarknadsförening’ under Lag (2004:297) om bank- och finansieringsrörelse’;

(8) Articles 8 and 9 are replaced by the following:

‘*Article 8*

Indirect funding of capital instruments for the purposes of Article 28(1), point (b), Article 52(1), point (c), and Article 63, point (c), and of liabilities for the purpose of Article 72b(2), point (c), of Regulation (EU) No 575/2013

1. Indirect funding of capital instruments under Article 28(1), point (b), Article 52(1), point (c) and Article 63, point (c), and liabilities under Article 72b(2), point (c), of Regulation (EU) No 575/2013 shall be deemed funding that is not direct.

2. For the purposes of paragraph 1, direct funding shall refer to situations where an institution has granted a loan or other funding in any form to an investor that is used for the acquisition of ownership of the institution’s capital instruments or liabilities.

3. Direct funding shall also include funding granted for other purposes than acquiring ownership of the capital instruments or liabilities of an institution, to any natural or legal person who has a qualifying holding in the institution, as referred to in Article 4(1), point (36), of Regulation (EU) No 575/2013, or who is deemed to be a related party within the meaning of the definitions in paragraph 9 of International Accounting Standard 24 on Related Party Disclosures as applied in the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (*), taking into account any additional guidance as provided by the competent authority for capital instruments, or the resolution authority in consultation with the competent authority for liabilities, if the institution is not able to demonstrate all of the following:

(a) the transaction is realised at similar conditions as other transactions with third parties;

(b) the natural or legal person or the related party does not have to rely on the distributions or on the sale of the capital instruments or liabilities held to support the payment of interest and the repayment of the funding.

Article 9

Applicable forms and nature of indirect funding of capital instruments for the purposes of Article 28(1), point (b), Article 52(1), point (c) and Article 63, point (c), and of liabilities for the purpose of Article 72b(2), point (c), of Regulation (EU) No 575/2013

1. The applicable forms and nature of indirect funding of the acquisition of ownership of the capital instruments and liabilities of an institution shall include all of the following:

(a) funding of an investor's acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution by any entities on which the institution has a direct or indirect control or by entities included in any of the following:

(i) the scope of accounting or prudential consolidation of the institution;

(ii) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;

(iii) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC of the European Parliament and of the Council (**);

(b) funding of an investor's acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution by external entities that are protected by a guarantee or by the use of a credit derivative or are secured in some other way so that the credit risk is transferred to the institution, or to any entities on which the institution has a direct or indirect control or any entities included in any of the following:

(i) the scope of accounting or prudential consolidation of the institution;

(ii) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;

(iii) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC.

(c) funding of a borrower that passes the funding on to the ultimate investor for the acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution.

2. In order to be considered as indirect funding for the purposes of paragraph 1, the following conditions shall also be met, where applicable:

(a) the investor is not included in any of the following:

(i) the scope of accounting or prudential consolidation of the institution;

(ii) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;

(iii) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC;

(b) the external entity is not included in any of the following:

(i) the scope of accounting or prudential consolidation of the institution;

(ii) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;

(iii) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC.

For the purposes of point (a)(ii), an investor shall be deemed to be included in the scope of the extended aggregated calculation where the relevant capital instrument or liability is subject to consolidation or extended aggregated calculation in accordance with Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013 in a way that the multiple use of own funds or eligible liabilities items and any creation of own funds or eligible liabilities between members of the institutional protection scheme is eliminated. Where the permission from competent authorities, referred to in Article 49(3) of Regulation (EU) No 575/2013, has not been granted, that condition shall be deemed to be met where both the entities referred to in paragraph 1, point (a), and the institution are members of the same institutional protection scheme and the entities deduct the funding provided for the acquisition of ownership of the capital instruments or liabilities of the institution, in accordance with Article 36(1), points (f) to (i), Article 56, points (a) to (d), and Article 66, points (a) to (d), for capital instruments, and in accordance with Article 72e, points (a) to (d), of Regulation (EU) No 575/2013, for liabilities, as applicable.

2a. The applicable forms and nature of indirect funding of the acquisition of ownership of the capital instruments and liabilities of an institution shall include intragroup circular funding.

For those purposes, intragroup circular funding means any of the following:

(a) situations where an institution has granted a loan or other funding in any form to one of the entities referred to in paragraph 1, point (a), through another entity referred to in paragraph 1, point (a), that is used for the acquisition of ownership of the institution’s capital instruments or liabilities;

(b) funding granted to one of the entities referred to in paragraph 1, point (a), for other purposes than acquiring ownership of the capital instruments or liabilities of an institution through another entity referred to in paragraph 1, point (a), provided that, taking into account any additional guidance as provided by the competent authority for capital instruments, or the resolution authority in consultation with the competent authority for liabilities, the institution is not able to demonstrate all of the following:

(i) the transaction is realised at similar conditions as other transactions with third parties;

(ii) the investor does not have to rely on the distributions or on the sale of the capital instruments or liabilities held to support the payment of interest and the repayment of the funding.

3. When establishing whether the acquisition of ownership of a capital instrument or liability involves direct or indirect funding as referred to in Article 8, the amount to be considered shall be net of any individually assessed impairment allowance made.

4. In order to avoid a qualification of direct or indirect funding as referred to in Article 8 and where the loan or other form of funding or guarantees is granted to any natural or legal person who has a qualifying holding in the institution or who is deemed to be a related party as referred to Article 8(3), the institution shall ensure on an on-going basis that it has not provided the loan or other form of funding or guarantees for the purposes of acquiring ownership directly or indirectly of capital instruments or liabilities of that institution. Where the loan or other form of funding or guarantees is granted to other types of party, the institution shall make this control on a best effort basis.

5. With regard to mutuals, cooperative societies and similar institutions, where a customer is obliged under national law or the statutes of the institution to subscribe capital instruments to receive a loan, that loan shall not be considered as a direct or indirect funding where all of the following conditions are met:

(a) the competent authority considers the amount of the subscription to be immaterial;

(b) the purpose of the loan is not the acquisition of ownership of capital instruments or liabilities of the institution providing the loan;

(c) the subscription of one or more capital instruments of the institution is necessary for the beneficiary of the loan to become a member of the mutual, cooperative society or similar institution.

(*) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).
(**) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).';

(9) in Article 12, paragraph 3 is replaced by the following:

'3. The recognised gain on sale which is associated with the future margin income, shall refer, in this context, to the expected future 'excess spread' defined as the finance charge collections and other fee income received in respect of the securitised exposures net of costs and expenses.';

(10) the title of Chapter III is replaced by the following:

'CHAPTER III

ADDITIONAL TIER 1 AND TIER 2 CAPITAL AND ELIGIBLE LIABILITIES'

(11) Article 20 is replaced by the following:

'*Article 20*

Form and nature of incentives to redeem for the purposes of Article 52(1), point (g), Article 63, point (h), Article 72b(2), point (g), and Article 72c(3) of Regulation (EU) No 575/2013

1. Incentives to redeem shall mean all features that provide, at the date of issuance, an expectation that the capital instrument or the liability is likely to be redeemed.

2. The incentives referred to in paragraph 1 shall include the following forms:

(a) a call option combined with an increase in the credit spread of the instrument or the liability if the call is not exercised;

(b) a call option combined with a requirement or an investor option to convert the instrument or the liability into a Common Equity Tier 1 instrument where the call is not exercised;

(c) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate;

(d) a call option combined with an increase of the redemption amount in the future;

(e) a remarketing option combined with an increase in the credit spread of the instrument or the liability or a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate where the instrument or the liability is not remarketed;

(f) a marketing of the instrument or the liability in a way which suggests to investors that the instrument will be called.';

(12) Article 25 is replaced by the following:

'*Article 25*

Extent of conservatism required in estimates for calculating exposures used as an alternative to the underlying exposures for the purposes of Article 76(2) of Regulation (EU) No 575/2013

1. An estimate shall be sufficiently conservative where either of the following conditions is met:

(a) where the investment mandate of the index specifies that an own funds instrument of a financial sector entity or an eligible liabilities instrument of an institution which is part of the index cannot exceed a maximum percentage of the index, the institution uses that percentage as an estimate for the value of the holdings that is deducted from its Common Equity Tier 1, Additional Tier 1, or Tier 2 items, as applicable in accordance with Article 17(2) or from Common Equity Tier 1 items in situations where the institution cannot determine the precise nature of the holding, or, for an institution subject to the requirements of Article 92a of Regulation (EU) No 575/2013, its eligible liabilities items;

(b) where the institution is unable to determine the maximum percentage referred to in point (a) and where the index, as evidenced by its investment mandate or other relevant information, includes own funds instruments of financial sector entities or eligible liabilities instruments of institutions, the institution deducts the full amount of the index holdings from its Common Equity Tier 1, Additional Tier 1, or Tier 2 items, as applicable in accordance with Article 17(2) or from Common Equity Tier 1 items in situations where the institution cannot determine the precise nature of the holding or, for an institution subject to the requirements of Article 92a of Regulation (EU) No 575/2013, its eligible liabilities items.

2. For the purposes of paragraph 1, the following shall apply:

(a) an indirect holding arising from an index holding comprises the proportion of the index invested in the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities and in eligible liabilities instruments of institutions included in the index;

(b) an index includes index funds, equity or bond indices or any other scheme where the underlying instrument is an own funds instrument issued by a financial sector entity or an eligible liabilities instrument issued by an institution.';

(13) in Article 26, paragraph 1 is replaced by the following:

'1. For the purpose of Article 76(3) of Regulation (EU) No 575/2013, operationally burdensome shall mean situations under which look-through approaches to capital instruments holdings in financial sector entities or to eligible liabilities instruments holdings in institutions on an ongoing basis are unjustified, as assessed by the competent authorities. In their assessment of the nature of operationally burdensome situations, competent authorities shall take into account the low materiality and short holding period of such positions. A holding period of short duration shall require the strong liquidity of the index to be evidenced by the institution.';

(14) Section 2 is replaced by the following:

'*SECTION 2*

Permission for reducing own funds and eligible liabilities

Subsection 1

Supervisory permission for reducing own funds

Article 27

Meaning of sustainable for the income capacity of the institution for the purposes of Article 78(1), point (a), and Article 78(4), point (d), of Regulation (EU) No 575/2013

Sustainable for the income capacity of the institution under Article 78(1), point (a), and under Article 78(4), point (d), of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the competent authority, continues to be sound or does not see any negative change after the replacement of the instruments or the related share premium accounts referred to in Article 77(1) of that Regulation with own funds instruments of equal or higher quality, at that date and for the foreseeable future. The competent authority's assessment shall take into account the institution's profitability in stress situations.

Article 28

Process requirements including the limits and procedures for an application by an institution to reduce own funds pursuant to Article 77(1) of Regulation (EU) No 575/2013

1. Redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior permission of the competent authority.

2. Where the actions listed in Article 77(1) of Regulation (EU) No 575/2013 are expected to take place with sufficient certainty, and once the prior permission of the competent authority has been obtained, the institution shall deduct the corresponding amounts of own funds instruments to be redeemed, reduced or repurchased or the amounts of the related share premium accounts to be reduced or distributed, as applicable, from corresponding elements of its own funds before the effective redemptions, reductions, repurchases or distributions occur. Sufficient certainty shall in particular be deemed to exist where the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument.

3. In the case of a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, the predetermined amount for which the competent authority has given its permission shall be deducted from corresponding elements of the institution's own funds from the moment the authorisation is granted.

4. When applying for a prior permission, including a general prior permission referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, for actions listed in Article 77(1) of that Regulation, and where the related own funds instruments are purchased for passing them on to employees of the institution as part of their remuneration, institutions shall inform their competent authorities that those instruments are purchased for that specific purpose. By way of derogation from paragraphs 2 and 3, those instruments shall be deducted from corresponding elements of the institution's own funds, for the time they are held by the institution. A deduction shall no longer be required where the expenses related to any action in accordance with this paragraph are already included in own funds as a result of an interim or a year-end financial report.

5. The competent authority shall grant a prior permission, other than the general prior permission referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, for a specified period of time, necessary to perform any of the actions listed in Article 77(1) of that Regulation, which shall not exceed one year.

6. Paragraphs 1 to 5 shall apply at consolidated, sub-consolidated and individual levels of application of prudential requirements, as applicable.

Article 29

Submission by the institution of an application to reduce own funds pursuant to Article 77(1) of Regulation (EU) No 575/2013

1. An institution shall submit an application for prior permission, including the general prior permission referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, to the competent authority before taking any of the actions referred to in Article 77(1) of that Regulation.

2. Paragraph 1 shall apply at consolidated, sub-consolidated and individual levels of application of prudential requirements, as applicable.

Article 30

Content of the application to be submitted by the institution for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. The application referred to in Article 29 shall be accompanied by all of the following:

(a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(1) of Regulation (EU) No 575/2013;

(b) information about whether the permission sought is based on Article 78(1), first subparagraph, point (a) or (b), of Regulation (EU) No 575/2013 or on Article 78(1), second subparagraph, of that Regulation;

(c) where the institution seeks to call, redeem or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following their date of issuance pursuant to Article 78(4) of Regulation (EU) No 575/2013, how the conditions of that Article are met;

(d) present and forward-looking information that shall cover at least a three year period, on the amounts and percentages corresponding to the following requirements for own funds and eligible liabilities:

(i) the Common Equity Tier 1 capital requirement laid down in Article 92(1), point (a), of Regulation (EU) No 575/2013, the Tier 1 capital requirement laid down in Article 92(1), point (b), of that Regulation, and the own funds requirement laid down in Article 92(1), point (c), of that Regulation;

(ii) to address risks other than the risk of excessive leverage, the additional Common Equity Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable, the additional Tier 1 capital requirement referred to in Article 104a of that Directive, where applicable, and the additional own funds requirement laid down in Article 104a of that Directive, where applicable;

(iii) the combined buffer requirement referred to in Article 128, point (6), of Directive 2013/36/EU;

(iv) the leverage ratio requirement laid down in Article 92(1), point (d), of Regulation (EU) No 575/2013, and where applicable any adjustment in accordance with Article 429a(7) of that Regulation;

(v) to address the risk of excessive leverage, the additional Common Equity Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable, and the additional Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable;

(vi) the Tier 1 G-SII leverage ratio buffer requirement laid down in Article 92(1a) of Regulation (EU) No 575/2013, where applicable;

(vii) the risk-based requirement for own funds and eligible liabilities laid down in Article 92a(1), point (a), or Article 92b of Regulation (EU) No 575/2013, where applicable, and the non-risk based requirement for own funds and eligible liabilities laid down in Article 92a(1), point (b), or Article 92b of that Regulation, where applicable;

(viii) the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU as required in accordance with Articles 45e and 45f of that Directive, as applicable, and calculated as the amount of own funds and eligible liabilities, and expressed as percentages of the total risk exposure amount of the institution, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and the amount of own funds and eligible liabilities expressed as percentages of the total exposure measure of the relevant entity, calculated in accordance with Article 429(4) and Article 429a of Regulation (EU) No 575/2013;

(e) present and forward-looking information on the level and composition of own funds and the level and composition of own funds and eligible liabilities held to ensure compliance, respectively, with the requirements referred to in points (d)(i) to (d)(viii) before and after performing any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013;

(f) the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(1) of Regulation (EU) No 575/2013, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in paragraph 1, points (d)(i) to (d)(viii);

(g) where the institution seeks to replace own funds instruments or the related share premium accounts pursuant to Article 78(1), point (a), or Article 78(4), point (d), of Regulation (EU) No 575/2013:

(i) information on the residual maturity of the replaced own funds instruments, if any, and the maturity of the own funds instruments replacing them;

(ii) the ranking in insolvency hierarchy of the replaced own funds instruments and of the own funds instruments replacing them;

(iii) the cost of the own funds instruments replacing the instruments or the shared premium accounts referred to in Article 77(1) of Regulation (EU) No 575/2013;

(iv) the planned timing of the issuance of the own funds instruments replacing the instruments or share premium accounts referred to in Article 77(1) of Regulation (EU) No 575/2013;

(v) the impact on the profitability of the institution pursuant to Article 78(1), point (a), or Article 78(4), point (d), of Regulation (EU) No 575/2013;

(h) an evaluation of the risks to which the institution is or might be exposed and whether the level of own funds and eligible liabilities ensures an appropriate coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses;

(i) coverage in terms of own funds of the applicable guidance on the proposed level and composition of additional own funds communicated by the competent authority under Article 104b(3) of Directive 2013/36/EU before and after performing any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013, covering a three year period;

(j) any other information considered necessary by the competent authority for evaluating the appropriateness of granting a permission in accordance with Article 78 of Regulation (EU) No 575/2013.

For the purposes of point (e), the information shall cover at least a three year period and, with regard to liabilities, shall include specifications of the following amounts, as applicable:

(a) liabilities which qualify as eligible liabilities instruments pursuant to Article 72b(2) of Regulation (EU) No 575/2013;

(b) liabilities which the resolution authority has permitted to qualify as eligible liabilities instruments pursuant to Article 72b, paragraphs 3 or 4, of Regulation (EU) No 575/2013;

(c) liabilities which are included in the amount of own funds and eligible liabilities of resolution entities pursuant to Article 45b(1) of Directive 2014/59/EU;

(d) liabilities that arise from debt instruments with embedded derivatives included in the amount of own funds and eligible liabilities pursuant to Article 45(b), point (2), of Directive 2014/59/EU;

(e) liabilities issued by a subsidiary which qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a of Regulation (EU) No 575/2013 pursuant to Article 88a of that Regulation or of a resolution entity pursuant to Article 45b(3) of Directive 2014/59/EU;

(f) eligible liabilities instruments taken into account for the purpose of complying with the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs pursuant to Article 92b(3) of Regulation (EU) No 575/2013 and for the purpose of complying with the minimum requirement for own funds and eligible liabilities for entities that are not themselves resolution entities, pursuant to Article 45f(2), point (a), of Directive 2014/59/EU.

2. The competent authority shall waive the submission of some of the information listed in paragraph 1 where it is satisfied that it already has that information.

3. Paragraphs 1 and 2 shall apply at individual, consolidated and sub-consolidated levels of application of requirements, as applicable.

Article 30a

Additional information to be submitted with an application for a general prior permission for actions listed in Article 77(1) of Regulation (EU) No 575/2013

1. Where a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013 for an action under Article 77(1), point (a), of that Regulation is sought for, the application shall specify the amount of each relevant Common Equity Tier 1 issue that is subject to that application.

2. Where a general prior permission for an action under Article 77(1), point (c), of Regulation (EU) No 575/2013 is sought for, the institution shall specify in the application all of the following:

(a) the amount of each relevant outstanding issue subject to the request;

(b) the total carrying amount of outstanding instruments in each relevant tier of capital.

3. An application for a general prior permission for an action under Article 77(1), points (a) and (c), of Regulation (EU) No 575/2013 may include own funds instruments still to be issued, subject to specification of the information referred to in paragraph 2, points (a) and (b), as applicable, to be provided to the competent authority following the relevant issuance.

4. Paragraphs 1, 2 and 3 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, as applicable.

Article 30b

Information to be submitted with an application for a renewal of a general prior permission for actions listed in Article 77(1) of Regulation (EU) No 575/2013

1. Before the expiry of a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, an institution may submit an application for its renewal for a period of up to one additional year each time, provided that the institution does not request an increase in the predetermined amount set when the general prior permission was granted and does not change the rationale as referred to in Article 30(1), point (a), when the original general prior permission was requested.

2. When applying for the renewal of the general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in Article 30(1), points (a) to (d), (f), (g) and (i).

Article 31

Timing of the application to be submitted by the institution and processing of the application by the competent authority for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. For a prior permission, other than a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Article 30 to the competent authority at least four months before the date on which one of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.

2. For a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Articles 30 and 30a to the competent authority at least four months before the date on which any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be carried out.

3. By way of derogation from paragraph 2, where a renewal of a general prior permission pursuant to Article 78(1), second subparagraph, of Regulation (EU) No 575/2013 and Article 30b is sought, the institution shall transmit the application and the information required under Articles 30, 30a and 30b to the competent authority at least three months before the expiration of the period for which the original general prior permission was granted.

4. Competent authorities may allow institutions on a case-by-case basis and under exceptional circumstances to transmit the application referred to in paragraphs 1, 2 and 3 within a time frame shorter than the periods set out in those paragraphs.

5. The competent authority shall process an application during either the period of time referred to in paragraphs 1, 2 and 3 or during the period of time referred to in paragraph 4. Competent authorities shall take into account new information received during that period, where any such new information is available and where they consider that information to be material. The competent authorities shall process the application only where they are satisfied that the institution has provided them with all the information required under Article 30 and, where applicable, Articles 30a and 30b.

Article 32

Applications for redemptions, reductions and repurchases by mutuals, cooperative societies, savings institutions or similar institutions for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. With regard to the redemption of Common Equity Tier 1 instruments of mutuals, cooperative societies, savings institutions or similar institutions, the application referred to in Article 29, paragraphs 1 and 2, and the information referred to in Article 30(1) shall be submitted to the competent authority with the same frequency as that used by the competent body of the institution to examine redemptions.

2. Competent authorities may give their permission in advance to an action listed in Article 77(1) of Regulation (EU) No 575/2013 for a certain predetermined amount to be redeemed, net of the amount of the subscription of new paid in Common Equity Tier 1 instruments during a period up to one year. That predetermined amount may go up to 2 % of Common Equity Tier 1 capital, if they are satisfied that this action will not pose a danger to the current or future solvency situation of the institution.

Subsection 2

Permission for reducing eligible liabilities instruments

Article 32a

Meaning of sustainable for the income capacity of the institution for the purposes of Article 78a(1), point (a), of Regulation (EU) No 575/2013

Sustainable for the income capacity of the institution under Article 78a(1), point (a), of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the resolution authority, continues to be sound or does not see any negative change after the replacement of the eligible liabilities instruments with own funds or eligible liabilities instruments of equal or higher quality, at that date and for the foreseeable future. The resolution authority's assessment shall take into account the institution's profitability in stress situations.

Article 32b

Process requirements, including the limits and procedures for an application by an institution to reduce eligible liabilities instruments pursuant to Article 77(2) of Regulation (EU) No 575/2013

1. Calls, redemptions, repayments and repurchases of eligible liabilities instruments shall not be announced to holders of those instruments before the institution has obtained the prior permission of the resolution authority.

2. Where the actions listed in Article 77(2) of Regulation (EU) No 575/2013 are expected to take place with sufficient certainty, and once the prior permission of the resolution authority has been obtained, the institution shall deduct the amounts to be called, redeemed, repaid or repurchased from the institution's eligible liabilities instruments before the effective calls, redemptions, repayments or repurchases occur. Sufficient certainty shall in particular be deemed to exist where the institution has publicly announced its intention to call, redeem, repay or repurchase an eligible liabilities instrument.

3. In the case of a general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, the predetermined amount for which the resolution authority has given its permission shall be deducted from the institution's eligible liabilities instruments from the moment the authorisation has been granted.

4. The resolution authority shall grant a prior permission, other than the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, for a specified period of time, necessary to perform any of the actions listed in Article 77(2) of that Regulation, which shall not exceed one year.

5. Where a general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013 is sought for, the predetermined amount for which the general prior permission is granted shall not exceed 10 % of the total amount of outstanding eligible liabilities instruments.

6. Paragraphs 1 to 5 shall apply at consolidated, sub-consolidated and individual levels of application of requirements for own funds and eligible liabilities, as applicable.

Article 32c

Submission by the institution of an application to reduce eligible liabilities instruments pursuant to Article 77(2) of Regulation (EU) No 575/2013

1. An institution shall submit an application for prior permission, including the general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, to the resolution authority before taking an action as referred to in Article 77(2) of that Regulation.

2. Paragraph 1 shall apply at individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, as applicable.

Article 32d

Content of the application to be submitted by the institution for the purposes of Article 77(2) of Regulation (EU) No 575/2013

1. The application referred to in Article 32c shall be accompanied by all of the following:

(a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(2) of Regulation (EU) No 575/2013;

(b) information about whether the permission sought is based on Article 78a(1), first subparagraph, points (a), (b) or (c), of Regulation (EU) No 575/2013, or on Article 78a(1), second subparagraph, of that Regulation;

(c) present and forward-looking information that shall cover at least a three year period, on the following requirements for own funds and eligible liabilities:

   (i) the risk-based requirement for own funds and eligible liabilities laid down in Article 92a(1), point (a), or Article 92b of Regulation (EU) No 575/2013, where applicable, and the non-risk based requirement for own funds and eligible liabilities laid down in Article 92a(1), point (b), or Article 92b of that Regulation, where applicable;

(ii) the minimum requirement for own funds and eligible liabilities laid down in Article 45 of Directive 2014/59/EU calculated in accordance with Article 45e and 45f of that Directive, as applicable, the amount of own funds and eligible liabilities expressed as percentages of the total risk exposure amount of the relevant entity, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and the amount of own funds and eligible liabilities expressed as percentages of the total exposure measure of the relevant entity, calculated in accordance with Article 429(4) and Article 429a of Regulation (EU) No 575/2013;

(iii) the combined buffer requirement referred to in Article 128, point (6), of Directive 2013/36/EU;

(d) present and forward-looking information on the level and composition of own funds and eligible liabilities held to ensure compliance, respectively, with the requirements referred to in paragraph 1, points (c)(i), (c)(ii) and (c)(iii), before and after performing the action referred to in Article 77(2) of Regulation (EU) No 575/2013. The information shall cover at least a three year period and shall, with regard to eligible liabilities, include specifications of the following amounts, as applicable:

(i) liabilities which qualify as eligible liabilities instruments pursuant to Article 72b(2) of Regulation (EU) No 575/2013;

(ii) liabilities which the resolution authority has permitted to qualify as eligible liabilities instruments pursuant to Article 72b, paragraphs 3 or 4, of Regulation (EU) No 575/2013;

(iii) liabilities which are included in the amount of own funds and eligible liabilities of resolution entities pursuant to Article 45b(1) of Directive 2014/59/EU;

(iv) liabilities that arise from debt instruments with embedded derivatives included in the amount of own funds and eligible liabilities pursuant to Article 45b(2) of Directive 2014/59/EU;

(v) liabilities issued by a subsidiary which qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a of Regulation (EU) No 575/2013 pursuant to Article 88a of that Regulation or of a resolution entity pursuant to Article 45b(3) of Directive 2014/59/EU;

(vi) eligible liabilities instruments taken into account for the purposes of complying with the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs pursuant to Article 92b(3) of Regulation (EU) No 575/2013 and for the purpose of complying with the minimum requirement for own funds and eligible liabilities for entities that are not themselves resolution entities, pursuant to Article 45f(2), point (a), of Directive 2014/59/EU;

(e) the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(2) of Regulation (EU) No 575/2013, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in paragraph 1, points (c)(i), (c)(ii) and (c)(iii);

(f) where the institution seeks to replace eligible liabilities instruments pursuant to Article 78a(1), point (a), of Regulation (EU) No 575/2013:

(i) information on the residual maturity of the replaced eligible liabilities instruments and the maturity of the own funds or eligible liabilities instruments replacing them;

(ii) the ranking in insolvency of the replaced eligible liabilities instruments and of the own funds or eligible liabilities instruments replacing them;

(iii) the cost of the own funds or eligible liabilities instruments replacing the eligible liabilities instruments;

(iv) the planned timing of the issuance of the own funds or eligible liabilities instruments replacing the eligible liabilities instruments referred to in Article 77(2) of Regulation (EU) No 575/2013;

(v) the impact on the profitability of the institution pursuant to Article 78a(1), point (a), of Regulation (EU) No 575/2013;

(g) an evaluation of the risks to which the institution is or might be exposed, in particular whether the level of own funds and eligible liabilities ensures an appropriate coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses;

(h) where Article 78a(1), point (c), of Regulation (EU) No 575/2013 applies, demonstration that the partial or full replacement of the eligible liabilities instruments with own funds instruments is necessary to ensure compliance with the own funds requirements;

(i) any other information considered necessary by the resolution authority for evaluating the appropriateness of granting a permission in accordance with Article 78a of Regulation (EU) No 575/2013.

2. The resolution authority shall waive the submission of some of the information listed in paragraph 1 where it is satisfied that it already has that information.

3. Paragraphs 1 and 2 shall apply at individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, as applicable.

Article 32e

Additional information to be submitted with the application for a general prior permission for actions listed in Article 77(2) of Regulation (EU) No 575/2013

1. Where a general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013 for an action under Article 77(2) of that Regulation is sought for, the institution shall specify in the application the total amount of outstanding eligible liabilities instruments, including the total amount of outstanding eligible liabilities instruments that meet the conditions of Article 88a of Regulation (EU) No 575/2013 or Article 45b(3) of Directive 2014/59/EU.

2. An application for a general prior permission for an action under Article 77(2) of Regulation (EU) No 575/2013 may include eligible liabilities instruments still to be issued, subject to specification of the final amount referred to in paragraph 1, to be provided to the resolution authority following the issuance concerned.

Article 32f

Information to be submitted with an application for a renewal of a general prior permission for actions listed in Article 77(2) of Regulation (EU) No 575/2013

1. Before the expiry of the general prior permission granted pursuant to Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, an institution may submit an application for its renewal for a period of up to one additional year each time, provided that the institution does not request an increase in the predetermined amount set when the original general prior permission was granted and does not change the rationale referred to in Article 32d(1), point (a), when the original general prior permission was requested.

2. When applying for the renewal of a general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in Article 32d(1), points (a), (b), (c), (e), (f) and (h).

Article 32g

Timing of the application to be submitted by the institution and processing of the application by the resolution authority for the purposes of Article 77(2) of Regulation (EU) No 575/2013

1. For a prior permission, other than the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Article 32d to the resolution authority at least four months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.

2. For the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Articles 32d and 32e to the resolution authority at least four months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be carried out.

3. By way of derogation from paragraph 2, where a renewal of the general prior permission pursuant to Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013 and Article 32f is sought, the institution shall transmit a complete application and the information required under Articles 32d, 32e and 32f to the resolution authority at least three months before the expiration of the period for which the original general prior permission was granted.

4. Resolution authorities may allow institutions on a case-by-case basis and under exceptional circumstances to transmit the application referred to in paragraphs 1, 2 and 3 within a time frame shorter than the periods set out in those paragraphs.

5. The resolution authority shall process an application during either the period of time referred to in paragraphs 1, 2 and 3 or during the period of time referred to in paragraph 4. Resolution authorities shall take into account new information received during that period, where any such new information is available and where they consider that information to be material. The resolution authorities shall process the application only where they are satisfied that the institution has provided them with all the information required under Article 32d and, where applicable, Articles 32e and 32f.

Article 32h

Simplified requirements for institutions for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses

1. By way of derogation from Articles 32d, 32e and 32f, where the application referred to in Article 32c is submitted by an institution for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses in accordance with Article 45c(2), first subparagraph, point (a), of that Directive, that application shall be accompanied by all of the following:

(a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(2) of Regulation (EU) No 575/2013;

(b) information about whether the permission sought is based on Article 78a(1), first subparagraph, points (a), (b) or (c), of Regulation (EU) No 575/2013, or on Article 78a(1), second subparagraph, of that Regulation.

2. A general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, granted following an application made in accordance with paragraph 1, shall not be subject to the restriction set out in Article 32b(5) of this Regulation.

3. By way of derogation from Article 32g, the institutions referred to in paragraph 1 shall submit the application referred to in Article 32c to the resolution authority at least three months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments or, in the case of an application for a general prior permission as referred to in Article 78a(1), second subparagraph, of that Regulation, at least three months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be carried out.

4. Where the resolution authority does not oppose in writing the application referred to in Article 32c within the periods specified in paragraph 3, the permission shall be deemed granted.

5. This article shall apply at individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, as applicable.

Article 32i

Process of cooperation between the competent authority and the resolution authority when granting the permission referred to in Article 78a of Regulation (EU) No 575/2013

1. Where a complete application for a prior permission, including the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, is submitted by an institution, the resolution authority shall promptly transmit that application to the competent authority, including the information referred to in Article 32d and, where applicable, Article 32e, Article 32f or Article 32h.

2. At the same time of the transmission of the information referred to in paragraph 1, the resolution authority shall make a request for consultation to the competent authority on the application received, which shall include the reciprocal exchange of any other relevant information for the assessment of the application by the resolution or competent authority.

3. The competent authority and the resolution authority shall agree on an adequate time limit for providing a response to the consultation referred to in paragraph 2, which shall not exceed three months from the moment of receipt of the request for consultation and that shall be reduced to two months where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h. The resolution authority shall consider the views received from the competent authority before taking a decision on the permission.

4. Where the agreement of the competent authority is required in accordance with Article 78a(1), point (b), of Regulation (EU) No 575/2013, the resolution authority shall communicate to the competent authority, within two months from the request for consultation referred to in paragraph 2, or within one month where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h, the proposed margin by which, following the action referred to in Article 77(2) of that Regulation, the resolution authority considers necessary that the own funds and eligible liabilities of the institution must exceed its requirements.

5. Within three weeks or, where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h, within two weeks, after receiving the communication referred to in paragraph 4, the competent authority shall transmit its written agreement to the resolution authority. In the event that the competent authority disagrees or partially disagrees with the resolution authority, it shall inform the resolution authority within that period, stating its reasons.

6. By way of derogation from paragraph 3, where the agreement of the competent authority is required in accordance with Article 78a(1), point (b), of Regulation (EU) No 575/2013, the competent authority shall provide a response to the consultation referred to in paragraph 2 at the same time as the transmission of its written agreement to the resolution authority referred to in paragraph 5.

7. By way of derogation from paragraphs 3 to 6, where the maximum time period for processing the application referred to in paragraph 1 is shorter than four months in accordance with Article 32g, paragraphs 3 or 4, the periods of time referred to in paragraphs 3, 4 and 5 shall be agreed between the resolution authority and the competent authority taking into account the relevant maximum time period.

8. The resolution authority and the competent authority shall endeavour to reach the agreement referred to in paragraph 5 in order to ensure that the application referred to in paragraph 1 is processed in any event within the period of time referred to in Article 32g, paragraphs 1, 2, 3 or 4.

9. The resolution authority shall communicate to the competent authority the decision taken on the permission without undue delay. The resolution authority shall also inform the competent authority in case of withdrawal of the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.'

(15) in Chapter IV, Section 3 is amended as follows:

(a) the title of Section 3 is replaced by the following:

'*SECTION 3*

Temporary waiver from deduction from own funds and eligible liabilities';

(b) the title of Article 33 is replaced by the following:

'*Article 33*

Temporary waiver from deduction from own funds and eligible liabilities for the purposes of Article 79(1) of Regulation (EU) No 575/2013';

(c) in Article 33, paragraphs 2 and 3 are replaced by the following:

'2. The waiver shall apply only in relation to new holdings of own funds instruments in a financial sector entity or eligible liabilities instruments in an institution subject to the financial assistance operation.

3. For the purposes of providing a temporary waiver for deduction from own funds and eligible liabilities, as applicable, a competent authority may deem the holdings referred to in Article 79(1) of Regulation (EU) No 575/2013 to be held for the purposes of a financial assistance operation designed to reorganise and save a financial sector entity or institution where the operation is carried out under a plan and approved by the competent authority, and where the plan clearly states phases, timing and objectives and specifies the interaction between the holdings and the financial assistance operation.'.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 October 2022.

For the Commission
The President
Ursula VON DER LEYEN